

11 Am. Jur. 2d Barbers and Cosmetologists Summary

American Jurisprudence, Second Edition | May 2021 Update

Barbers and Cosmetologists

Romualdo P. Eclavea, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses the control, regulation, and licensing of barbers and barbershops, cosmetologists, hairdressers, and the like, and the liability of those who engage in these occupations and professions for personal injuries to their patrons.

Treated Elsewhere:

Agreement not to engage in a competing business, enforceability of, see [Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1 et seq.](#)

Bulk sales laws, application to beauty shop operators, see [Am. Jur. 2d, Fraudulent Conveyances and Transfers § 207](#)

Civil rights statutes, application to barbershops and beauty parlors, see [Am. Jur. 2d, Civil Rights § 244](#)

Contract for employment as a beauty operator as assignable, see [Am. Jur. 2d, Assignments § 28](#)

Liability for property left on business premises by a customer, see [Am. Jur. 2d, Bailments § 43](#)

Operation of barber or beauty shop as violative of covenant restricting use to which real property may be put, see [Am. Jur. 2d, Covenants, Conditions, and Restrictions § 205](#)

Social Security laws, barbers, beauticians, and similar workers as engaged in “employment” or “self-employment” within the meaning of, see [Am. Jur. 2d, Social Security and Medicare §§ 240, 241](#)

Zoning and planning laws, application to beauty parlors or barbershops, see [Am. Jur. 2d, Zoning and Planning § 192](#)

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11 Am. Jur. 2d Barbers and Cosmetologists I A Refs.

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Barbers and Cosmetologists

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I. Regulation

A. Definitions

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Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4275

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

A.L.R. Library

A.L.R. Index, Barbers and Beauty Specialists

West's A.L.R. Digest, [Constitutional Law](#) 🔑 3685, 4275

West's A.L.R. Digest, [Licenses](#) 🔑 1 to 41

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11 Am. Jur. 2d Barbers and Cosmetologists § 1

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Barbers and Cosmetologists
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I. Regulation

A. Definitions

§ 1. Barbers and barbershops

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4275

West's Key Number Digest, [Licenses](#)  1 to 41

The occupation of a barber has been recognized as including, but not being limited to, shaving; trimming the beard; cutting and razor cutting; styling; relaxing; body waving; shampooing; hair coloring; facial massaging; and designing, fitting and cutting of hair pieces.¹ Barbering further may include the giving of facial or scalp massage with oils, creams, lotions or other preparations, either by hand or mechanical appliances; applying hair tonic; and applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face or neck.² These services are performed for hire or reward received by the person performing the services.³ However, the services may specifically be deemed not to be barbering when done for the treatment of disease or of physical or mental ailments.⁴

Reminder:

The definition of “barber” has changed over time, as new categories of professionals are added, and new techniques developed. Also, there has been a change in gender-specific restrictions, such as those giving barbers the exclusive right to work on men's hair (as opposed to cosmetologists or hairdressers), reflecting caselaw finding this a violation of equal protection,⁵ and modernization of the statutes, generally. The most recent statutes should always be consulted to determine current definitions.

Statutes and cases often include barber shops in lists of public accommodations for the purposes of antidiscrimination laws.⁶ Additionally, federal statutes specify barber and beauty shops as private entities that are considered “public accommodations” for purposes of the Americans With Disabilities Act, if their operations affect commerce.⁷

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Footnotes

- 1 [Conaway v. Deane](#), 401 Md. 219, 932 A.2d 571 (2007), opinion extended after remand, 2008 WL 3999843 (Md. Cir. Ct. 2008) and (abrogated on other grounds by, [Obergefell v. Hodges](#), 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)).
- 2 [Martineau v. Ghezzi](#), 389 F. Supp. 187 (N.D. N.Y. 1974) (applying New York law).
- 3 [Conaway v. Deane](#), 401 Md. 219, 932 A.2d 571 (2007), opinion extended after remand, 2008 WL 3999843 (Md. Cir. Ct. 2008) and (abrogated on other grounds by, [Obergefell v. Hodges](#), 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)).
- 4 [Martineau v. Ghezzi](#), 389 F. Supp. 187 (N.D. N.Y. 1974) (applying New York law).
- 5 § 7.
- 6 [Deck v. City of Toledo](#), 56 F. Supp. 2d 886 (N.D. Ohio 1999) (applying Ohio law); [Sellers v. Philip's Barber Shop](#), 46 N.J. 340, 217 A.2d 121 (1966); [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles](#), 148 Wash. 2d 224, 59 P.3d 655 (2002).
- 7 42 U.S.C.A. § 12181(7)(F).

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11 Am. Jur. 2d Barbers and Cosmetologists § 2

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I. Regulation

A. Definitions

§ 2. Cosmetology; hairdressing; beauticians

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4275

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

The practice of hairdressing and cosmetology has been recognized as including the use of the hands or mechanical, electrical or other apparatus or appliances, or the use of tonics, lotions, creams, cosmetics, cosmetic preparations or compounds, for the following:

- (1) waving, dyeing, coloring, bleaching, cutting, arranging, dressing, curling, cleansing, or stimulating the growth of hair;
- (2) massaging, cleansing, exercising, stimulating, or beautifying of the scalp, face, neck, or arms, or of the bust or upper part of the body;
- (3) stimulating the growth of hair of the head of any person; and
- (4) manicuring the nails of any person.¹

The work done by hairdressers, cosmetologists, or beauticians, as used in a statute that has since been updated and which removes specifications as to sex, is for the embellishment, cleanliness and beautification of women's hair, such as arranging, dressing, curling, waving, permanent waving, cleansing, cutting, singeing, arching of eyebrows, dyeing of eyebrows and eyelashes, bleaching, coloring, or similar work, and the removal of superfluous hair. It is also the massaging, cleansing, stimulating, exercising, or similar work upon the scalp, face, arms or hands, by the use of mechanical or electrical apparatus or appliances or cosmetics, preparations, tonics, antiseptics, creams or lotions or by any other means, and of manicuring the nails of either sex.²

Caution:

As with the definition of “barber,”³ these terms have changed over time, especially to remove gender classifications⁴ and the modernization of the statutes, generally. The most recent statutes should always be consulted to determine current definitions.

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Footnotes

- 1 [Martineau v. Ghezzi](#), 389 F. Supp. 187 (N.D. N.Y. 1974) (applying New York law).
- 2 [Conaway v. Deane](#), 401 Md. 219, 932 A.2d 571 (2007), opinion extended after remand, 2008 WL 3999843 (Md. Cir. Ct. 2008) and (abrogated on other grounds by, [Obergefell v. Hodges](#), 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)).
- 3 § 1.
- 4 § 7.

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11 Am. Jur. 2d Barbers and Cosmetologists § 3

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I. Regulation

A. Definitions

§ 3. Beauty shop

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4275

West's Key Number Digest, [Licenses](#)  1 to 41

A beauty shop has been defined by statute as any building or portion of a building in which any person is engaged in the practice of cosmetology.¹ A beauty shop has been recognized as an establishment providing women with services that include hair treatment, manicures, and facials; and establishments for the hairdressing, manicuring, or other beauty treatment of women.²

Observation:

It has been recognized that the use of a premises as a massage center is a use of the same general character as the use of a premises as a barber shop or a beauty salon.³

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Footnotes

¹ [Uqdah v. District of Columbia](#), 785 F. Supp. 1015 (D.D.C. 1992), judgment vacated on other grounds, [995 F.2d 306](#) (D.C. Cir. 1993) (applying District of Columbia law).

As to whether a beauty parlor qualifies as a home occupation allowable by zoning requirements in residential areas, see [Am. Jur. 2d, Zoning and Planning § 221](#).

As to zoning restrictions on equipment as applied to a beauty parlor located in a home, see [Am. Jur. 2d, Zoning and Planning § 208](#).

2 [Gottier v. Somers Zoning Com'n, 5 Conn. L. Rptr. 221, 1991 WL 244796 \(Conn. Super. Ct. 1991\)](#) (quoting well-known dictionaries).

3 [Hawkins v. Zoning Hearing Bd. of Bristol Tp., 76 Pa. Commw. 470, 463 A.2d 1291 \(1983\)](#).

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Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2422(1), 2425(3), 3685, 4275

West's Key Number Digest, [Health](#) 🔑 351 to 354

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

West's Key Number Digest, [Municipal Corporations](#) 🔑 611

A.L.R. Library

A.L.R. Index, Barbers and Beauty Specialists

A.L.R. Index, Licenses and Permits

A.L.R. Index, Police Power

West's A.L.R. Digest, [Constitutional Law](#) 🔑 2422(1), 2425(3), 3685, 4275

West's A.L.R. Digest, [Health](#) 🔑 351 to 354

West's A.L.R. Digest, [Licenses](#) 🔑 1 to 41

West's A.L.R. Digest, [Municipal Corporations](#) 🔑 611

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11 Am. Jur. 2d Barbers and Cosmetologists § 4

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I. Regulation


B. Validity and Type of Regulation

§ 4. Barbers and barber shops

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4275

West's Key Number Digest, [Health](#)  352 to 354

West's Key Number Digest, [Licenses](#)  1 to 41

The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the liberty and property concepts of the Fifth Amendment.¹ The occupation of barbering is a lawful one,² but the business of barbering is subject to reasonable regulation by the state under its police power.³ The basis of barber licensing law is essentially public health regulation,⁴ with the purpose of preventing the spread of communicable diseases.⁵ This is true for the licensing requirements for barbers, as well as for those requiring that a registered barber maintain and supervise a barber shop.⁶ In addition, licensing barbers is meant to prevent injury to the public by assuring that the occupation will be practiced with honesty and integrity, and that those who are incompetent or unworthy are excluded from practicing it.⁷

A state licensing authority may inquire into the moral character of an applicant for a certificate of registration as a barber apprentice and deny an application based on failure to submit satisfactory proof.⁸ A statutory provision prohibiting a barbershop manager from employing a person who is not a licensed barber to cut hair is not considered unreasonable or violative of due process and equal protection.⁹

While a state may properly regulate the business operations involved in the practice of barbering,¹⁰ restrictions on the operations of barbershops¹¹ and regulation of the conditions under which barbers must operate,¹² are valid only when they fall within the proper exercise of the police power. Legislation prohibiting barbers or cosmetologists from advertising or displaying price lists for their services, for example, have been found unreasonable, capricious, or arbitrary regulations, and thus outside the scope of the police power.¹³ However, the validity of some regulations has been upheld as against objections predicated upon alleged infringement of the Interstate Commerce Clause of the Constitution.¹⁴

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Footnotes

- 1 [Cornwell v. California Bd. of Barbering and Cosmetology](#), 962 F. Supp. 1260 (S.D. Cal. 1997) (construing U.S. Const. Amend. V; quoting [Greene v. McElroy](#), 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959)).
- 2 [City of Miami v. Shell's Super Store](#), 50 So. 2d 883 (Fla. 1951); [In re Opinion of the Justices](#), 300 Mass. 615, 14 N.E.2d 953 (1938); [City of Cincinnati v. Correll](#), 141 Ohio St. 535, 26 Ohio Op. 116, 49 N.E.2d 412 (1943); [Patton v. City of Bellingham](#), 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934).
- 3 [Minnesota Bd. of Barber Examiners v. Laurance](#), 300 Minn. 203, 218 N.W.2d 692 (1974); [Berger v. State Bd. of Hairdressing](#), 118 R.I. 55, 371 A.2d 1053 (1977); [Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing](#), 87 Wis. 2d 175, 274 N.W.2d 618 (1979).
As to the police power of states, generally, see [Am. Jur. 2d, Constitutional Law](#) §§ 332 to 399.
- 4 [Mains v. Board of Barber Examiners](#), 249 Cal. App. 2d 459, 57 Cal. Rptr. 573 (3d Dist. 1967); [Wheeling Barber College v. Roush](#), 174 W. Va. 43, 321 S.E.2d 694 (1984).
- 5 [Cooper v. Rollins](#), 152 Ga. 588, 110 S.E. 726, 20 A.L.R. 1105 (1922); [State v. Sullivan](#), 245 Minn. 103, 71 N.W.2d 895, 56 A.L.R.2d 871 (1955); [Patton v. City of Bellingham](#), 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934).
- 6 [Byrd v. Employment Sec. Agency](#), 86 Idaho 469, 388 P.2d 100 (1964).
- 7 [Citrano v. Department of Registration and Ed. of State of Ill.](#), 90 Ill. App. 3d 937, 46 Ill. Dec. 352, 414 N.E.2d 74 (1st Dist. 1980).
- 8 [La Cloche v. Daniels](#), 195 Misc. 2d 329, 755 N.Y.S.2d 827 (Sup 2003).
- 9 [Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing](#), 87 Wis. 2d 175, 274 N.W.2d 618 (1979).
- 10 [Mains v. Board of Barber Examiners](#), 249 Cal. App. 2d 459, 57 Cal. Rptr. 573 (3d Dist. 1967).
- 11 [Dunbar v. Hoffman](#), 171 Colo. 481, 468 P.2d 742 (1970).
- 12 [Mains v. Board of Barber Examiners](#), 249 Cal. App. 2d 459, 57 Cal. Rptr. 573 (3d Dist. 1967).
- 13 [People v. Osborne](#), 17 Cal. App. 2d Supp. 771, 59 P.2d 1083 (App. Dep't Super. Ct. 1936); [State v. Danberg](#), 40 Del. 136, 6 A.2d 596 (Gen. Sess. 1939); [State v. Garrubo](#), 124 N.J.L. 19, 10 A.2d 635 (N.J. Sup. Ct. 1940).
- 14 [United Enterprises v. Dubey](#), 128 F.2d 843 (C.C.A. 5th Cir. 1942) (applying Florida law); [Luzier Special Formula Laboratories v. Minnesota State Bd. of Hairdressing & Beauty Culture Examiners](#), 189 Minn. 151, 248 N.W. 664 (1933).

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11 Am. Jur. 2d Barbers and Cosmetologists § 5

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Barbers and Cosmetologists

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I. Regulation

B. Validity and Type of Regulation

§ 5. Cosmetologists, beauty shops, hair stylists, etc.

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4275

West's Key Number Digest, [Health](#) 🔑 351 to 354

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

Just as is the case with the regulation of barbers,¹ the business of hairdressing is subject to reasonable regulation by the state under its police power.² The intent of statutes that regulate cosmetologists, aestheticians, manicurists, and beauty salons is to protect the health³ and safety of the general public and, more specifically, the patrons of beauty shops, from unqualified practitioners and unsanitary conditions.⁴ Such statutes are intended to ensure that the activities of practitioners are not dangerous or injurious to the health of the community⁵ and that communicable diseases are not spread.⁶

Protection of the public from untrained and unlicensed hairdressers and ensuring that safe and sanitary conditions exist in hairdressing establishments is well within the exercise of a state's police power.⁷ A state may require that an operator not practice cosmetology unless under the supervision and direction of a licensed manager because it is reasonably related to insuring that cosmetology is practiced only by competent operators, which is a goal within the state's power to regulate.⁸ Similarly, a beauty shop owner may be required to employ only licensed hairdressers and cosmetologists.⁹

Observation:

Procedures that are closely related to a cosmetologist's procedures may be viewed as medical in nature in some jurisdictions, resulting in such procedures being regulated by a state medical board, rather than under an authority regulating cosmetology.¹⁰

Particular procedures may be included within the definition of cosmetology by a licensing board so that a cosmetology license would be required to perform them.¹¹

Statutory provisions limiting the practice of cosmetology to licensed beauty salons are neither unreasonable nor violative of due process and equal protection.¹² However, as with the regulation of barbers,¹³ the regulation of the places in and conditions under which cosmetologists must operate may be justified only when such regulation comes properly within a state's police power.¹⁴

The means chosen to exercise the state's power to regulate hairdressers and cosmeticians must bear a real and substantial relation to public health, safety, morals or general welfare.¹⁵

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Footnotes

- 1 § 4.
- 2 *Berger v. State Bd. of Hairdressing*, 118 R.I. 55, 371 A.2d 1053 (1977).
As to the police power of states, generally, see *Am. Jur. 2d, Constitutional Law* §§ 332 to 399.
- 3 *Mains v. Board of Barber Examiners*, 249 Cal. App. 2d 459, 57 Cal. Rptr. 573 (3d Dist. 1967) (cosmetology);
Brown v. Who's Three, Inc., 217 Ga. App. 131, 457 S.E.2d 186 (1995).
- 4 *Brown v. Who's Three, Inc.*, 217 Ga. App. 131, 457 S.E.2d 186 (1995).
- 5 *Christiaan's, Inc. v. Chobanian*, 118 R.I. 199, 373 A.2d 160 (1977).
- 6 *Dobres v. Schwartzman*, 191 Md. 19, 59 A.2d 684 (1948); *State v. Sullivan*, 245 Minn. 103, 71 N.W.2d 895,
56 A.L.R.2d 871 (1955); *Haigh v. State Bd. of Hairdressing*, 74 R.I. 106, 58 A.2d 925 (1948).
- 7 *Berger v. State Bd. of Hairdressing*, 118 R.I. 55, 371 A.2d 1053 (1977).
- 8 *Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing*, 87 Wis. 2d
175, 274 N.W.2d 618 (1979).
- 9 *Tarulli v. Shaffer*, 112 A.D.2d 283, 491 N.Y.S.2d 729 (2d Dep't 1985).
- 10 *Craft v. Ohio State Bd. of Cosmetology*, 107 Ohio App. 3d 541, 669 N.E.2d 85 (3d Dist. Allen County
1995) (depilation by use of electric tweezers to coagulate a hair root and permanently remove hair, properly
regulated by state medical board).
- 11 *Grady v. Department of Professional Regulation, Board of Cosmetology*, 402 So. 2d 438 (Fla. 3d DCA 1981),
dismissed, 411 So. 2d 382 (Fla. 1981) (cosmetology includes an aesthetician's activities, in the absence of
contrary evidence from aesthetician).
- 12 *Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing*, 87 Wis. 2d
175, 274 N.W.2d 618 (1979).
- 13 § 4.
- 14 *Mains v. Board of Barber Examiners*, 249 Cal. App. 2d 459, 57 Cal. Rptr. 573 (3d Dist. 1967).
- 15 *Christiaan's, Inc. v. Chobanian*, 118 R.I. 199, 373 A.2d 160 (1977).

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11 Am. Jur. 2d Barbers and Cosmetologists § 6

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Barbers and Cosmetologists

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I. Regulation

B. Validity and Type of Regulation

§ 6. Cosmetologists, beauty shops, hair stylists, etc.—Braiding

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4275

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

Statutes and regulations governing cosmetology may violate the substantive due process and equal protection rights of persons whose activities are confined to the braiding of African hair, where the statutes and regulations are not rationally related to the objective of ensuring that qualified persons practice cosmetology.¹ However, if hair braiding salon owners fail to provide any testimony regarding the nature of their businesses, the manner in which they braid hair, or if their business is limited to the braiding of hair, and there is no evidence regarding whether local beauty schools teach hair braiding or offer courses relevant to hair braiders, such salon owners cannot prevail on a claim that they are denied due process or equal protection under a state licensing law.²

Observation:

Strict constitutional scrutiny is not applied to a state statute regulating cosmetology and alleged to violate the due process and equal protection rights of African hair stylists, where the statute is not discriminatory on its face and racial animus does not appear in the regulations or the manner in which the statute is applied.³

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Footnotes

- 1 [Cornwell v. Hamilton, 80 F. Supp. 2d 1101 \(S.D. Cal. 1999\)](#) (reviewing California law in the light of the [U.S. Const. Amend. XIV](#)), finding that braiders, under California cosmetology law, are required to absorb a large body of knowledge irrelevant to their actual activities and expose themselves unnecessarily to dangerous chemicals used in cosmetology; at the same time, cosmetology courses devote so little attention to hair braiding that aspiring braiders are required to obtain additional training in order to learn the craft.
- 2 [Diwara v. State Board of Cosmetology, 852 A.2d 1279 \(Pa. Commw. Ct. 2004\)](#).
- 3 [Cornwell v. Hamilton, 80 F. Supp. 2d 1101 \(S.D. Cal. 1999\)](#).

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11 Am. Jur. 2d Barbers and Cosmetologists § 7

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Barbers and Cosmetologists

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I. Regulation


B. Validity and Type of Regulation

§ 7. Overlaps in permissible services and regulation between barbers and cosmetologists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4275

West's Key Number Digest, [Health](#)  351 to 354

West's Key Number Digest, [Licenses](#)  1 to 41

In some jurisdictions, statutes strictly separate barbers and beauticians.¹ In such a jurisdiction, for example, permanent waving may be performed only by beauticians, and not by barbers.² There may, however, be an overlap, so that a cosmetologist may cut and trim the hair of both male and female patrons when such cutting and trimming is incidental to styling and arranging the hair.³

The professions of cosmetology and barbering have been viewed as similarly situated for equal protection purposes so that regulations deemed necessary to orderly functioning of barbers should be equally applicable to cosmetologists.⁴ Thus, a statute relating to the number of apprentice barbers and various regulations imposed on barbers but not cosmetologists are unconstitutional denials of equal protection.⁵ In addition, statutory prohibitions on cosmetologists cutting and shampooing male hair in the same manner as they cut and shampoo female hair violate cosmetologists' equal protection⁶ and due process rights,⁷ as well as those of their patrons.⁸ Similarly, a statute that restricts the services of licensed cosmetologists to females only, and that of licensed barbers to male persons, is unconstitutional.⁹

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Footnotes

- ¹ [Wheeling Barber College v. Roush](#), 174 W. Va. 43, 321 S.E.2d 694 (1984).
- ² [Wheeling Barber College v. Roush](#), 174 W. Va. 43, 321 S.E.2d 694 (1984), although discussing the possibility that, following proper procedure, such regulation could be changed.
- ³ [Panico v. Robinson](#), 23 Ill. App. 3d 848, 320 N.E.2d 101 (1st Dist. 1974).

- 4 Grassman v. Minnesota Bd. of Barber Examiners, 304 N.W.2d 909 (Minn. 1981).
- 5 Grassman v. Minnesota Bd. of Barber Examiners, 304 N.W.2d 909 (Minn. 1981).
- 6 People v. Taylor, 189 Colo. 202, 540 P.2d 320 (1975); Maryland State Bd. of Barber Examiners v. Kuhn, 270 Md. 496, 312 A.2d 216 (1973); People v. McDonald, 67 Mich. App. 64, 240 N.W.2d 268 (1976); Minnesota Bd. of Barber Examiners v. Laurance, 300 Minn. 203, 218 N.W.2d 692 (1974).
- 7 People v. Taylor, 189 Colo. 202, 540 P.2d 320 (1975); Maryland State Bd. of Barber Examiners v. Kuhn, 270 Md. 496, 312 A.2d 216 (1973); People v. McDonald, 67 Mich. App. 64, 240 N.W.2d 268 (1976); Minnesota Bd. of Barber Examiners v. Laurance, 300 Minn. 203, 218 N.W.2d 692 (1974); Christiaan's, Inc. v. Chobanian, 118 R.I. 199, 373 A.2d 160 (1977).
- 8 Pavone v. Louisiana State Bd. of Barbers Examiners, 364 F. Supp. 961 (E.D. La. 1973), judgment aff'd, 505 F.2d 1022 (5th Cir. 1974).
- 9 Bolton v. Texas Bd. of Barber Examiners, 350 F. Supp. 494 (N.D. Tex. 1972), judgment aff'd, 409 U.S. 807, 93 S. Ct. 52, 34 L. Ed. 2d 68 (1972).

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11 Am. Jur. 2d Barbers and Cosmetologists § 8

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Barbers and Cosmetologists
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I. Regulation


B. Validity and Type of Regulation

§ 8. Schools for barbers and cosmetologists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4275

West's Key Number Digest, [Health](#)  351 to 354

West's Key Number Digest, [Licenses](#)  1 to 41

Forms

Forms relating to barbers or cosmetologists license, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

Regulation of the operation or management of a barber school is a legitimate exercise of the police power.¹ Thus, a state may regulate barber colleges on the basis of their offering of barber services to the general public in connection with the training of students.² Likewise, the state may regulate beauty schools because of the nature of the work performed there.³ In addition, the state may regulate the courses of study there⁴ and the number of instructors.⁵ The state may also prescribe a specified minimum of floor space, barber chairs, and classroom chairs for a barber college or school.⁶ Also, a license or registration for operating a beauty culture school may be required,⁷ and such a license may be revoked as an enforcement tool.⁸

Practice Tip:

Under some state statutes, operators of private cosmetology schools are entitled to a hearing for suspension or revocation of an existing license, although not entitled to a hearing on applications for license renewal.⁹

However, unless the attempted regulation of a barbering or beauty school has some reasonable relation to public health, welfare, or safety, it may be declared invalid.¹⁰ Furthermore, regulation of the upgrade or advanced training of barbers may be beyond the power of some state regulatory boards.¹¹ A prohibition on the collection of a fee for supplies used on any person acting as a subject for a student in hairdressing school has been found to bear no legitimate relationship to the guarantee of safe and sanitary conditions within the school, and thus to violate due process.¹²

Observation:

Suits have been brought against beauty colleges under the Racketeer Influenced and Corrupt Organizations Act (RICO)¹³ and state consumer fraud acts for fraudulent misrepresentation of the education provided at the college.¹⁴

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Footnotes

- 1 Minnesota Bd. of Barber Examiners v. Laurance, 300 Minn. 203, 218 N.W.2d 692 (1974).
- 2 Texas State Bd. of Barber Examiners v. Beaumont Barber College, Inc., 454 S.W.2d 729 (Tex. 1970).
- 3 Salisbury Beauty Schools v. State Bd. of Cosmetologists, 268 Md. 32, 300 A.2d 367 (1973).
- 4 Gilchrist v. Bierring, 234 Iowa 899, 14 N.W.2d 724 (1944).
- 5 Gillett v. Florida University of Dermatology, 144 Fla. 236, 197 So. 852 (1940); Petranto v. New Jersey State Bd. of Barber Examiners, 125 N.J.L. 391, 15 A.2d 893 (N.J. Ct. Err. & App. 1940).
- 6 Texas State Bd. of Barber Examiners v. Beaumont Barber College, Inc., 454 S.W.2d 729 (Tex. 1970), finding such restrictions not arbitrary or unreasonable.
- 7 Baffoni v. State, Dept. of Health, 118 R.I. 226, 373 A.2d 184 (1977).
- 8 State Bd. of Cosmetology v. Maddux, 162 Colo. 550, 428 P.2d 936 (1967); Geiger v. Mississippi State Bd. of Cosmetology, 246 Miss. 542, 151 So. 2d 189 (1963); O'Brien v. State Bd. of Cosmetology, 776 S.W.2d 896 (Mo. Ct. App. S.D. 1989).
- 9 Richard I, Inc. v. Ambach, 90 A.D.2d 127, 457 N.Y.S.2d 583 (3d Dep't 1982), order aff'd, 61 N.Y.2d 784, 473 N.Y.S.2d 165, 461 N.E.2d 302 (1984).
- 10 Mansfield Beauty Academy v. Board of Registration of Hairdressers, 326 Mass. 624, 96 N.E.2d 145 (1951).
- 11 Colorado State Bd. of Barber Examiners v. White, 29 Colo. App. 471, 485 P.2d 928 (App. 1971).
- As to the delegation of powers to barber and cosmetology regulatory boards, see § 9.
- 12 Berger v. State Bd. of Hairdressing, 118 R.I. 55, 371 A.2d 1053 (1977).
- 13 18 U.S.C.A. §§ 1961 to 1968.

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As to RICO, generally, see [Am. Jur. 2d, Extortion, Blackmail, and Threats §§ 104 to 206](#).

[Rosario v. Livaditis](#), 963 F.2d 1013, 22 Fed. R. Serv. 3d 843 (7th Cir. 1992) (allegations that beauty schools were shams, providing little or no education and not adequately preparing students for a career in cosmetology).

As to consumer fraud acts, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 272 to 300](#).

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11 Am. Jur. 2d Barbers and Cosmetologists § 9

American Jurisprudence, Second Edition | May 2021 Update

Barbers and Cosmetologists
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I. Regulation

B. Validity and Type of Regulation

§ 9. Authority of regulatory body

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2422(1), 2425(3)

West's Key Number Digest, [Licenses](#)  1 to 41

Forms

Forms relating to barbers or cosmetologists license, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

A legislature may delegate to a board, commission, or other administrative agency the power to execute and administer the laws that it enacts governing barbers and beauticians, and to adopt and enforce rules and regulations designed to implement those laws and carry out the legislative intent without violating constitutional inhibitions against the delegation of legislative powers.¹ For example, a regulatory board may be charged with day-to-day administration of matters pertaining to barbers and beauticians, with rulemaking authority as to licenses, qualifications, and with educational requirements concurrent with and limited by the authority of the State Department of health.² A board may also be given broad powers to regulate and supervise the barbering industry,³ such as authority to prescribe and determine the qualifications of barbers, and cosmetologists in order to obtain a license,⁴ authority to grant or deny licenses,⁵ and to suspend licenses,⁶ or revoke them.⁷ This can include the power of a regulating board or agency to reconsider and modify its determination or correct errors on the ground of fraud or deception, illegality, irregularity in vital matters, mistake, misconception of facts, erroneous conclusion of law, surprise, or inadvertence.⁸

Observation:

It is entirely proper for a cosmetology examining board in a department of regulation and licensing to take judicial notice of its own records.⁹

Boards have also been authorized by various statutes:

- (1) to prescribe courses of study and training as conditions of an examination for a license to practice;¹⁰
- (2) to provide reasonable rules and regulations for establishments carrying on or teaching these occupations;¹¹ and
- (3) to inspect licensed barbers, barber shops and schools,¹² or beauty salons,¹³ to see that health and other statutory regulatory requirements are met.

Rules and regulations promulgated by regulatory boards must have a legitimate relationship to the express statutory provisions and objectives to be served.¹⁴ Thus, for example, a board of barbers may not require a year's apprenticeship be served in a commercial barbershop prior to examination and licensing as a barber where the relevant statute simply required a year's apprenticeship served under a licensed barber.¹⁵ A board may not impose an educational requirement upon cosmetologists from other states who apply for reciprocal licenses where the relevant reciprocity statute provides that only a valid driver's license from the other state and a showing that either the standards of the other state are not lower than those of the jurisdiction, or that the applicant has engaged in the licensed practice of cosmetology for three years.¹⁶ Moreover, regulating upgrade or advanced training of barbers may be beyond the power of some state regulatory boards.¹⁷

A claim by eyebrow threaders and their salon employers under the Declaratory Judgment Act against the Department of Licensing and Regulation and Commission for Licensing and Regulation, based on the assertion that the cosmetology statutes and regulations establishing licensing requirements for estheticians violated due course of law as applied to eyebrow threaders, has been deemed viable, and thus, was not subject to dismissal on a plea to jurisdiction on the basis of immunity.¹⁸

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Footnotes

- 1 Gilchrist v. Bierring, 234 Iowa 899, 14 N.W.2d 724 (1944); Atchley v. Board of Barber Examiners of State, 1953 OK 146, 208 Okla. 453, 257 P.2d 302 (1953); State v. Ross, 185 S.C. 472, 194 S.E. 439 (1937).
- 2 Wheeling Barber College v. Roush, 174 W. Va. 43, 321 S.E.2d 694 (1984).
- 3 Colorado State Bd. of Barber Examiners v. White, 29 Colo. App. 471, 485 P.2d 928 (App. 1971).
- 4 State v. Ross, 185 S.C. 472, 194 S.E. 439 (1937); Turner v. Bennett, 108 S.W.2d 967 (Tex. Civ. App. Beaumont 1937).
- 5 Visage Exp. Inc. v. State Bd. of Cosmetologists, 342 Md. 605, 679 A.2d 525 (1996) (cosmetology).

- 6 Visage Exp. Inc. v. State Bd. of Cosmetologists, 342 Md. 605, 679 A.2d 525 (1996); Turner v. Bennett, 108 S.W.2d 967 (Tex. Civ. App. Beaumont 1937).
- 7 As to the suspension or revocation of barbering and cosmetology licenses, generally, see § 12.
- 8 Turner v. Bennett, 108 S.W.2d 967 (Tex. Civ. App. Beaumont 1937).
- 9 Geiger v. Mississippi State Bd. of Cosmetology, 246 Miss. 542, 151 So. 2d 189 (1963) (revocation of license).
- 10 Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing, 87 Wis. 2d 175, 274 N.W.2d 618 (1979).
- 11 Gilchrist v. Bierring, 234 Iowa 899, 14 N.W.2d 724 (1944).
- 12 As to schools for barbering and cosmetology, generally, see § 8.
- 13 Gillett v. Florida University of Dermatology, 144 Fla. 236, 197 So. 852 (1940); Schneider v. Pullen, 198 Md. 64, 81 A.2d 226 (1951); Lee v. Delmont, 228 Minn. 101, 36 N.W.2d 530 (1949).
- 14 Colorado State Bd. of Barber Examiners v. White, 29 Colo. App. 471, 485 P.2d 928 (App. 1971).
- 15 Visage Exp. Inc. v. State Bd. of Cosmetologists, 342 Md. 605, 679 A.2d 525 (1996).
- 16 Colorado State Bd. of Barber Examiners v. White, 29 Colo. App. 471, 485 P.2d 928 (App. 1971).
- 17 Board of Barbers of Dept. of Professional and Occupational Licensing v. Big Sky College of Barber-Styling, Inc., 192 Mont. 159, 626 P.2d 1269 (1981).
- 18 § 11.
- § 8.
- Patel v. Texas Department of Licensing and Regulation, 469 S.W.3d 69 (Tex. 2015).

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11 Am. Jur. 2d Barbers and Cosmetologists § 10

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I. Regulation

B. Validity and Type of Regulation

§ 10. Regulation by municipalities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑3685

West's Key Number Digest, [Licenses](#) 🔑1 to 41

West's Key Number Digest, [Municipal Corporations](#) 🔑611

Forms

Forms relating to city licensing, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [[Westlaw®\(r\) Search Query](#)]

A municipal corporation, by virtue of its general police powers, granted by the state constitution¹ or delegated by the legislature,² may adopt and enforce ordinances regulating the profession or trade of barbers and cosmetologists, which are designed to promote and maintain the general welfare, comfort, and health of its inhabitants.³ The power of a municipal corporation in this regard is derived from and dependent upon some constitutional or legislative grant of authority, express or implied,⁴ and the exercise of that power must be reasonable,⁵ and consistent with the spirit of the state laws and the general policy of the state.⁶

The fact that a barbershop ordinance regulates the hours of opening and closing, while a beauty parlor ordinance does not regulate hours, does not deny barbers equal protection, because, despite the contention that men patronize beauty parlors today, beauty parlors and barbershops are not “engaged in the same business,” and thus the ordinances did not fail to treat alike those similarly situated.⁷

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Footnotes

- 1 [Patton v. City of Bellingham](#), 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934).
- 2 [State v. Reeve](#), 104 Fla. 196, 139 So. 817, 79 A.L.R. 1119 (1932).
- 3 [State v. Reeve](#), 104 Fla. 196, 139 So. 817, 79 A.L.R. 1119 (1932); [Anthony v. City of Atlanta](#), 66 Ga. App. 504, 18 S.E.2d 81 (1941); [Department of Licenses and Inspections, Bd. of License and Inspection Review v. Weber](#), 394 Pa. 466, 147 A.2d 326 (1959).
- 4 [City of Marengo v. Rowland](#), 263 Ill. 531, 105 N.E. 285 (1914); [Patton v. City of Bellingham](#), 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934); [State v. Walker](#), 48 Wash. 8, 92 P. 775 (1907).
- 5 [City of Miami v. Shell's Super Store](#), 50 So. 2d 883 (Fla. 1951); [Patton v. City of Bellingham](#), 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934); [State v. Sharpless](#), 31 Wash. 191, 71 P. 737 (1903).
- 6 [City of Marengo v. Rowland](#), 263 Ill. 531, 105 N.E. 285 (1914).
- 7 [State v. Schwarcz](#), 123 N.J. Super. 482, 303 A.2d 610 (County Ct. 1973).

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I. Regulation

C. Licensing and Registration

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4262, 4275

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

A.L.R. Library

A.L.R. Index, Barbers and Beauty Specialists

A.L.R. Index, Licenses and Permits

A.L.R. Index, Police Power

West's A.L.R. Digest, [Constitutional Law](#) 🔑 3685, 4262, 4275

West's A.L.R. Digest, [Licenses](#) 🔑 1 to 41

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11 Am. Jur. 2d Barbers and Cosmetologists § 11

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Barbers and Cosmetologists
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I. Regulation

C. Licensing and Registration

§ 11. Qualifications of applicants for licenses or registration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3685, 4262, 4275

West's Key Number Digest, [Licenses](#) 🔑 1 to 41

An individual generally must be licensed by the jurisdiction to practice barbering or cosmetology.¹ The requirements for applicants for barbering or cosmetology are generally defined by statute in each jurisdiction. Such statutes may, for example, require barber applicants to serve an apprenticeship under a licensed barber, prior to examination and licensing,² and to pay a mandated fee.³ A statute may require that an apprentice be at least a certain age, possess good moral character, graduate from a barber college or school, attain a minimum grade of general education, pass an apprentice examination, obtain certain medical certificates, and pay the required fee.⁴

Applicants to become cosmetologists may need to meet minimum age requirements and registration requirements, to be trained as an apprentice or at an approved school of cosmetology, and to pass an examination.⁵ However, statutory prohibitions on cosmetologists cutting and shampooing male hair in the same manner as they cut and shampoo female hair have been found to violate cosmetologists' equal protection and due process rights.⁶

Observation:

Reciprocity agreements that allow for licensing without examination for persons who are residents of other states need not be applied to foreign nationals.⁷

Some statutory schemes provide for different levels of licenses available to cosmetologists, each with its own licensing requirements. For example, one statutory scheme provides for a manager's license, which requires a certain time period as a cosmetologist and the passing of a manager's examination, and an operator's license, which allows the practice of cosmetology only under the supervision of a licensed manager.⁸

Observation:

Lists of registered or licensed individuals, such as lists of licensed cosmetologists, constitute records that must be provided upon request under some freedom of information laws.⁹

Practice Tip:

Although the view is not unanimous,¹⁰ the particular acts involved in sales demonstrations of cosmetic products have been found to be within the scope of statutes requiring licensing or registration of beauty specialists or cosmetologists,¹¹ and due process and equal protection are not violated by applying such statutes to such persons.¹²

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Footnotes

- 1 Hoff v. State, 39 Del. 134, 197 A. 75 (Super. Ct. 1938); Visage Exp. Inc. v. State Bd. of Cosmetologists, 342 Md. 605, 679 A.2d 525 (1996); State v. Walker, 48 Wash. 8, 92 P. 775 (1907); State v. Sharpless, 31 Wash. 191, 71 P. 737 (1903).
- 2 Duke v. James, 713 F.2d 1506 (11th Cir. 1983) (applying Alabama law); Board of Barbers of Dept. of Professional and Occupational Licensing v. Big Sky College of Barber-Styling, Inc., 192 Mont. 159, 626 P.2d 1269 (1981).
- 3 Duke v. James, 713 F.2d 1506 (11th Cir. 1983) (applying Alabama law).
- 4 Duke v. James, 713 F.2d 1506 (11th Cir. 1983) (applying Alabama law).
- 5 Uqdah v. District of Columbia, 785 F. Supp. 1015 (D.D.C. 1992), judgment vacated on other grounds, 995 F.2d 306 (D.C. Cir. 1993) (applying District of Columbia law).
- 6 § 7.

- 7 Visage Exp. Inc. v. State Bd. of Cosmetologists, 342 Md. 605, 679 A.2d 525 (1996).
8 Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing, 87 Wis. 2d
175, 274 N.W.2d 618 (1979).
9 Am. Jur. 2d, Freedom of Information Acts § 69.
10 Board of Cosmetological Examiners of Jefferson County v. Gibbons, 238 Ala. 612, 193 So. 116 (1940).
11 United Enterprises v. Dubey, 128 F.2d 843 (C.C.A. 5th Cir. 1942).
12 State v. Sullivan, 245 Minn. 103, 71 N.W.2d 895, 56 A.L.R.2d 871 (1955).

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11 Am. Jur. 2d Barbers and Cosmetologists § 12

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Barbers and Cosmetologists

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I. Regulation

C. Licensing and Registration

§ 12. Revocation or suspension of license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4262, 4275

West's Key Number Digest, [Licenses](#)  38, 39.39

Forms

Forms relating to barbers or cosmetologists license, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

The right to suspend a license for an infraction of rules is a permissible part of a state's police power to regulate,¹ and is among the powers granted to regulatory boards in some jurisdictions.² Thus, there may be a revocation of a barbershop license, and the licenses of barbers employed there, after a barbershop owner refuses to permit an authorized inspector of the board of barbering to inspect booths in the shop occupied by patrons;³ and a beauty shop owner's license may be suspended for employing unlicensed hairdressers and cosmetologists.⁴ The imposition of a fine and revocation of a beauty salon proprietor's cosmetology license has been held proper where a salon employee performed cosmetic therapy procedures without the required license.⁵ However, a licensed barber's leaving a shop temporarily while an apprentice was engaged in cutting a customer's hair was found not to be such a violation of a statute regarding the supervision of apprentices as to warrant suspension of the licenses of the barber and the apprentice.⁶

Before there can be revocation of a license, there must be due notice and a fair hearing in accordance with constitutional due process.⁷

There is an unconstitutional deprivation of a liberty interest when a state regulatory official, acting in concert with others on a regulatory board, intentionally misapplies state licensing laws to keep a business competitor from obtaining a barbershop license.⁸ However, a beauty salon cannot defend its intentional violations of requirements that it employ licensed cosmetologists on the ground that the board of cosmetologists wrongfully denied licenses to the salon's employees.⁹

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Footnotes

- 1 [Doyle v. Board of Barber Examiners](#), 219 Cal. App. 2d 504, 33 Cal. Rptr. 349 (3d Dist. 1963).
- 2 [§ 9](#).
- 3 [Stogner v. Com. of Ky.](#), 638 F. Supp. 1 (W.D. Ky. 1985).
- 4 [Tarulli v. Shaffer](#), 112 A.D.2d 283, 491 N.Y.S.2d 729 (2d Dep't 1985).
- 5 [Craft v. Ohio State Bd. of Cosmetology](#), 107 Ohio App. 3d 541, 669 N.E.2d 85 (3d Dist. Allen County 1995).
- 6 [Salazar v. McGinn](#), 28 Utah 2d 176, 499 P.2d 857 (1972).
- 7 [State Bd. of Cosmetology v. Maddux](#), 162 Colo. 550, 428 P.2d 936 (1967).
- 8 [Wilkerson v. Johnson](#), 699 F.2d 325 (6th Cir. 1983) (ruling on the validity of a Tennessee law).
- 9 [Visage Exp. Inc. v. State Bd. of Cosmetologists](#), 342 Md. 605, 679 A.2d 525 (1996).

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11 Am. Jur. 2d Barbers and Cosmetologists § 13

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I. Regulation

C. Licensing and Registration

§ 13. Revocation or suspension of license—Judicial review; equitable relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3685, 4262, 4275

West's Key Number Digest, [Licenses](#)  1 to 41

Forms

Forms relating to barbers or cosmetologists license, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

The decision of a barbering or cosmetology regulating board in some jurisdictions are subject to review under statutes relating to the review of administrative agency decisions generally, such as a state administrative procedure act.¹ It is proper for the trial court to take additional testimony in some situations, such as where an appellant alleges that there was not proper notice given of the hearings conducted by the regulating cosmetology board.² Findings of the board in support of an administrative sanction must be supported by a clear preponderance of the evidence.³

Where an appeal is taken from a trial court decision dismissing petitions for review of decisions of the state cosmetology or barber's examining boards, the only question on appeal is whether the trial court erred in its review, although questions of law may also be reviewed by appellate courts.⁴

A trial court may properly grant equitable relief while administrative proceedings are pending on possible revocation or suspension of a barber's license where the barber shows the inadequacy of available legal remedies, the futility of pursuing relief through administrative channels, and the likelihood of irreparable injury if the courts do not intervene.⁵

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Footnotes

- 1 [Arkansas State Bd. of Cosmetology v. Roberts](#), 28 Ark. App. 249, 772 S.W.2d 624 (1989) (review of cosmetology board decision).
As to judicial review of the decisions of an administrative agency, generally, see [Am. Jur. 2d, Administrative Law](#) §§ 383 to 559.
- 2 [Arkansas State Bd. of Cosmetology v. Roberts](#), 28 Ark. App. 249, 772 S.W.2d 624 (1989).
- 3 [Scientific Academy of Hair Design, Inc. v. Bowen](#), 738 P.2d 242 (Utah Ct. App. 1987).
The evidence supported the finding of the Board of Cosmetology that the cosmetology school committed unethical practices through the use of razor blade tools where, although the school disputed that tools were being used at the school or that the students were being instructed in their use, two razor scraper tools were present in the school together with other pedicure-related articles. [LT Intern. Beauty School, Inc. v. Com., Bureau of Professional and Occupational Affairs, State Bd. of Cosmetology](#), 13 A.3d 1004 (Pa. Commw. Ct. 2011).
- 4 [Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing](#), 87 Wis. 2d 175, 274 N.W.2d 618 (1979).
- 5 [Aliperto v. Department of Registration and Ed.](#), 90 Ill. App. 3d 985, 46 Ill. Dec. 395, 414 N.E.2d 117 (1st Dist. 1980).

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I. Regulation

D. Other Requirements

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#) 🔑455
West's Key Number Digest, [Constitutional Law](#) 🔑4275
West's Key Number Digest, [Health](#) 🔑352 to 354
West's Key Number Digest, [Licenses](#) 🔑40
West's Key Number Digest, [Zoning and Planning](#) 🔑1291

A.L.R. Library

A.L.R. Index, Barbers and Beauty Specialists
A.L.R. Index, Police Power
West's A.L.R. Digest, [Antitrust and Trade Regulation](#) 🔑455
West's A.L.R. Digest, [Constitutional Law](#) 🔑4275
West's A.L.R. Digest, [Health](#) 🔑352 to 354
West's A.L.R. Digest, [Licenses](#) 🔑40
West's A.L.R. Digest, [Zoning and Planning](#) 🔑1291

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11 Am. Jur. 2d Barbers and Cosmetologists § 14

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Barbers and Cosmetologists
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I. Regulation

D. Other Requirements

§ 14. Health and safety requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Health](#)  352 to 354

West's Key Number Digest, [Licenses](#)  40

Regulation of barbers and cosmetologists, and their training schools, is essentially based on public health concerns.¹ Protection of the public from untrained and unlicensed hairdressers and ensuring that safe and sanitary conditions exist in hairdressing establishments is well within the exercise of the state's police power.² Thus, there are statutes requiring that beauty salons be kept in clean and sanitary conditions.³ Fire prevention measures, required sanitation supplies and equipment, the types and numbers of waste containers and sinks, and even the minimum number of combs and brushes may also be specified by statute.⁴ In addition, statutes have prescribed minimum standards for ventilation, and have required the physical separation of the beauty shop or barbering business from living quarters and other business operations.⁵

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Footnotes

- 1 §§ 4, 5, 8.
- 2 [Berger v. State Bd. of Hairdressing](#), 118 R.I. 55, 371 A.2d 1053 (1977).
- 3 [Johnson v. Ohio State Bd. of Cosmetology](#), 104 Ohio App. 3d 662, 662 N.E.2d 1128 (3d Dist. Crawford County 1995).
- 4 [Uqdah v. District of Columbia](#), 785 F. Supp. 1015 (D.D.C. 1992), judgment vacated on other grounds, 995 F.2d 306 (D.C. Cir. 1993) (applying District of Columbia law).
- 5 § 15.

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11 Am. Jur. 2d Barbers and Cosmetologists § 15

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I. Regulation

D. Other Requirements

§ 15. Building requirements; separation of living quarters or other businesses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Health](#) 352 to 354

West's Key Number Digest, [Licenses](#) 40

West's Key Number Digest, [Zoning and Planning](#) 1291

Statutes in some jurisdictions specifically govern the physical plant of a beauty shop, as well as what equipment it must have, and the minimum standards for ventilation it must meet.¹ In addition, there are statutes requiring separate entrances for beauty shops and living quarters.² Similarly, there are prohibitions in statutes on a room or place used for barbering from being used for other residential or business purposes unless a solid partition extending from floor to ceiling separates the portion used for nonbarbering purposes,³ although this does not require the separation of barbers from cosmetologists in a unisex hairstyling shop.⁴

Observation:

Some courts have been unwilling to classify a beauty parlor or a barbershop as a home occupation for purposes of zoning, which would allow the practice of these professions in a residentially zoned neighborhood, and such use may properly be excluded even in sparsely settled neighborhoods.⁵

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Footnotes

- 1 [Uqdah v. District of Columbia](#), 785 F. Supp. 1015 (D.D.C. 1992), judgment vacated on other grounds, 995 F.2d 306 (D.C. Cir. 1993) (applying District of Columbia law).
As to building requirements for barber schools, see § 8.
- 2 [Johnson v. Ohio State Bd. of Cosmetology](#), 104 Ohio App. 3d 662, 662 N.E.2d 1128 (3d Dist. Crawford County 1995).
- 3 [Doyle v. Board of Barber Examiners](#), 244 Cal. App. 2d 521, 53 Cal. Rptr. 420 (3d Dist. 1966); [Mans Look, Inc. v. Florida Barbers' Sanitary Commission](#), 292 So. 2d 387 (Fla. 3d DCA 1974).
- 4 [Mans Look, Inc. v. Florida Barbers' Sanitary Commission](#), 292 So. 2d 387 (Fla. 3d DCA 1974).
- 5 [Am. Jur. 2d, Zoning and Planning § 192](#).

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11 Am. Jur. 2d Barbers and Cosmetologists § 16

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Barbers and Cosmetologists
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I. Regulation

D. Other Requirements

§ 16. Regulation of opening and closing hours

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Licenses](#)  40

Any regulation of the opening and closing hours of barbershops, beauty shops, or beauty culture establishments, or the hours that such businesses may remain open, must depend for its validity upon whether the public health, morals, safety, or general welfare is, or might be, affected by such businesses being permitted to remain open or continue after certain hours.¹ Most cases that have considered the validity of such statutes or ordinances have reached the conclusion that provisions regulating the hours of the day during which a barbershop or beauty parlor can remain open for business have no real and substantial relation to safety laws or general welfare of the public and, hence, cannot be upheld as a proper exercise of the police power in regulating the profession.² It has been denied that regulations of this character can be considered sanitary measures³ or be supported on the theory that they will aid in the enforcement of proper inspection regulations.⁴

There are, however, cases holding that regulations fixing closing hours constitute a valid and constitutional exercise of the police power.⁵ Assuming the power of the state to regulate or fix the hours in which barbershops may be operated, due process of law requires that the board authorized to fix opening and closing hours give notice of hearings at which these matters are to be considered, and an opportunity to be heard.⁶

Some ordinances fixing closing hours for barbershops, but excluding beauty shops from the operation of such provision, have been held invalid as being unreasonably arbitrary as to classification.⁷

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Footnotes

- 1 City of Cincinnati v. Correll, 141 Ohio St. 535, 26 Ohio Op. 116, 49 N.E.2d 412 (1943); City of New Castle
v. Sullivan, 36 Pa. D. & C. 47, 1939 WL 2689 (Quar. Sess. 1939).
- 2 City of Miami v. Shell's Super Store, 50 So. 2d 883 (Fla. 1951); City of Louisville v. Kuhn, 284 Ky. 684, 145
S.W.2d 851 (1940); In re Opinion of the Justices, 337 Mass. 796, 151 N.E.2d 631 (1958); City of Cincinnati
v. Correll, 141 Ohio St. 535, 26 Ohio Op. 116, 49 N.E.2d 412 (1943); Patton v. City of Bellingham, 179
Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934).
- 3 City of Cincinnati v. Correll, 141 Ohio St. 535, 26 Ohio Op. 116, 49 N.E.2d 412 (1943).
- 4 In re Opinion of the Justices, 300 Mass. 615, 14 N.E.2d 953 (1938); Knight v. Johns, 161 Miss. 519, 137
So. 509 (1931); Patton v. City of Bellingham, 179 Wash. 566, 38 P.2d 364, 98 A.L.R. 1076 (1934).
- 5 Pearce v. Moffatt, 60 Idaho 370, 92 P.2d 146 (1939).
- 6 Robbins v. Webb's Cut Rate Drug Co., 153 Fla. 822, 16 So. 2d 121 (1943).
- 7 City and County of Denver v. Schmid, 98 Colo. 32, 52 P.2d 388 (1935); Ernesti v. City of Grand Island,
125 Neb. 688, 251 N.W. 899 (1933).

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11 Am. Jur. 2d Barbers and Cosmetologists § 17

American Jurisprudence, Second Edition | May 2021 Update

Barbers and Cosmetologists
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I. Regulation

D. Other Requirements

§ 17. Official price schedules

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  455

West's Key Number Digest, [Constitutional Law](#)  4275

West's Key Number Digest, [Licenses](#)  40

A.L.R. Library

[Validity of statute establishing or authorizing minimum price schedules for barbers, 54 A.L.R.3d 916](#)

A number of courts have held statutes fixing or regulating, or authorizing the fixing or regulating of, prices that barbers or cosmetologists may charge for their services unconstitutional on the theory that they have no real or substantial relation to public health, safety, or welfare,¹ reasoning that the barbers' services are not affected with a public interest or devoted to a public purpose, and thus attempts to regulate or fix prices violate constitutional guaranties of due process of law and freedom of contract.² On the other hand, there is also substantial support for the view upholding the constitutionality of statutes fixing or regulating, or authorizing the fixing or regulating of, prices that barbers or cosmetologists may charge for their services, on the ground that there is a reasonable connection between the price-fixing features of the statutes and the public health.³

Price schedules issued as to what may be charged the general public by hairdressing schools or colleges whose students perform cosmetological or hairdressing services must meet the requirements of the statute authorizing the price list, such as taking into account all the products used by the school and the cost of certain products to schools with the least purchasing power.⁴ Further, there may be a statutory prohibition against making any charge for clinical work performed by students in beauty schools; such a form of regulation is unconstitutional only if it is arbitrary, discriminatory, or demonstrably irrelevant to promotion of the

public's health, safety and welfare, and hence an unnecessary and unwarranted interference with individual liberty.⁵ However, a state law barring hairdressing schools from charging a fee for supplies used on any person acting as a subject for student training has been found to bear no relation to the public health aspects of hairdressing, and thus violative of due process.⁶

Observation:

The delegation of the power to establish minimum price schedules for barbering services for any city or county to the state board of barber examiners where four of the five members are required to be barbers is an unlawful delegation of legislative power because of the power it gives such board members to regulate the business of their competitors.⁷

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Footnotes

- 1 Edwards v. State Bd. of Barber Examiners, 72 Ariz. 108, 231 P.2d 450 (1951); In re Kazas, 22 Cal. App. 2d 161, 70 P.2d 962 (4th Dist. 1937); Christian v. La Forge, 194 Or. 450, 242 P.2d 797 (1952); State v. Greeson, 174 Tenn. 178, 124 S.W.2d 253 (1939).
- 2 City of Mobile v. Rouse, 233 Ala. 622, 173 So. 266, 111 A.L.R. 349 (1937); Edwards v. State Bd. of Barber Examiners, 72 Ariz. 108, 231 P.2d 450 (1951); Christian v. La Forge, 194 Or. 450, 242 P.2d 797 (1952).
- 3 McRae v. Robbins, 151 Fla. 109, 9 So. 2d 284 (1942); Board of Barber Examiners of Louisiana v. Parker, 190 La. 214, 182 So. 485 (1938); Nissen v. Miller, 1940-NMSC-055, 44 N.M. 487, 105 P.2d 324 (1940); Herrin v. Arnold, 1938 OK 440, 183 Okla. 392, 82 P.2d 977, 119 A.L.R. 1471 (1938).
- 4 Maine Beauty Schools, Inc. v. State Bd. of Hairdressers, 225 A.2d 424 (Me. 1967).
- 5 Salisbury Beauty Schools v. State Bd. of Cosmetologists, 268 Md. 32, 300 A.2d 367 (1973).
- 6 Berger v. State Bd. of Hairdressing, 118 R.I. 55, 371 A.2d 1053 (1977).
- 7 Allen v. California Board of Barber Examiners, 25 Cal. App. 3d 1014, 102 Cal. Rptr. 368, 54 A.L.R.3d 910 (4th Dist. 1972).

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11 Am. Jur. 2d Barbers and Cosmetologists II Refs.

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II. Liability for Injury to Patron

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑 114
West's Key Number Digest, [Insurance](#) 🔑 2391(1)
West's Key Number Digest, [Labor and Employment](#) 🔑 3025 to 3077
West's Key Number Digest, [Negligence](#) 🔑 321, 322, 483, 550 to 570, 1075 to 1078, 1625, 1717, 1728, 1745
West's Key Number Digest, Release 🔑 1 to 24

A.L.R. Library

A.L.R. Index, Barbers and Beauty Specialists
A.L.R. Index, Comparative Negligence
A.L.R. Index, Contributory Negligence or Assumption of Risk
A.L.R. Index, Cosmetics
A.L.R. Index, Degree and Standard of Care
A.L.R. Index, Negligence
A.L.R. Index, Res Ipsa Loquitur
West's A.L.R. Digest, [Contracts](#) 🔑 114
West's A.L.R. Digest, [Insurance](#) 🔑 2391(1)
West's A.L.R. Digest, [Labor and Employment](#) 🔑 3025 to 3077
West's A.L.R. Digest, [Negligence](#) 🔑 321, 322, 483, 550 to 570, 1075 to 1078, 1625, 1717, 1728, 1745
West's A.L.R. Digest, Release 🔑 1 to 24

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11 Am. Jur. 2d Barbers and Cosmetologists § 18

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II. Liability for Injury to Patron

§ 18. Liability for injury to patron, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Insurance](#) 2391(1)

West's Key Number Digest, [Labor and Employment](#) 3025 to 3077

West's Key Number Digest, [Negligence](#) 321, 322, 1075 to 1078, 1728

A.L.R. Library

[Coverage and exceptions in beauty shop liability policy, 77 A.L.R.2d 1258](#)

Trial Strategy

[Negligent Treatment of Beauty Salon Patron, 39 Am. Jur. Proof of Facts 2d 417](#) (Proving negligence of beauty salon in causing patron's injuries)

Forms

Forms relating to standard of care and skill or injury from permanent wave, or bleach, or dye, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

The liability of barbers, beauty specialists, beauty culturists, or hairdressers for injuries to their patrons is predicated upon the broad general principle that persons who hold themselves out to practice a profession or to do certain kinds of work impliedly warrant or undertake that they possess the necessary knowledge to practice the profession or to do the work, and that they are reasonably competent for, and will exercise the ordinary skill and care in, the performance of the employment undertaken.¹ One engaged in such business must exercise the ordinary skill and ability of those engaged in the business in the locality where the defendant operates.² A beauty shop is not required to be the guarantor of the safety of its customers; its fundamental obligations towards its invitees are to exercise reasonable care to protect customers and to maintain the premises in a reasonably safe condition for use in a manner consistent with the purpose of the premises,³ unless the liability is imposed by statute.⁴

Observation:

Beauty shop operators are among those insurable under professional and occupational liability insurance.⁵

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Footnotes

- 1 [Micek v. Weaver-Jackson Co.](#), 12 Cal. App. 2d 19, 54 P.2d 768 (2d Dist. 1936); [Hogan v. Hornbeck](#), 282 Ky. 574, 138 S.W.2d 1032 (1940); [Pratt v. E.W. Edwards & Son](#), 227 A.D. 210, 237 N.Y.S. 372 (4th Dep't 1929). A genuine issue of material fact existed as to whether a cosmetologist breached a duty of care to a beauty salon client in failing to respond to the client's indications of discomfort during the hair rinsing procedure and should have stopped the procedure or taken other appropriate steps to ensure the client's safety. This issue of material fact precluded summary judgment in a negligence action brought by the client, who suffered a brain stem stroke from an alleged hyperextension of her neck during the rinse procedure. [Bates v. Design of the Times, Inc.](#), 261 Neb. 332, 622 N.W.2d 684 (2001).
- 2 [White v. Louis Creative Hair Dressers, Inc.](#), 273 F.2d 832 (D.C. Cir. 1959); [Cowhig v. Cafarelli](#), 318 Mass. 632, 63 N.E.2d 347 (1945); [Smith v. Artiste Permanent Wave Shoppe](#), 293 Mich. 441, 292 N.W. 361 (1940).
- 3 [Walden v. Pat Goins Benton Road Beauty School, Inc.](#), 501 So. 2d 1014 (La. Ct. App. 2d Cir. 1987).
- 4 [Smith v. Bernfeld](#), 226 Md. 400, 174 A.2d 53 (1961).
- 5 [Am. Jur. 2d, Insurance § 694.](#)

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11 Am. Jur. 2d Barbers and Cosmetologists § 19

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Barbers and Cosmetologists
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II. Liability for Injury to Patron

§ 19. Beauty school's failure to supervise; vicarious liability of school

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Negligence](#)  [321](#), [322](#), [483](#), [550 to 570](#), [1075 to 1078](#), [1728](#)

The relationship between a cosmetology school and its students may give rise to vicarious liability on the part of the school for injuries suffered by a patron because of a student's negligent performance of beauty services.¹ A patron has a right to rely on a school's compliance with the provisions of a state law requiring that any shop where cosmetology is practiced, or school where such is taught, be at all times under the direct supervision of a licensed cosmetologist.²

Where there is no pecuniary gain to the school from the students' performance of services, it has been held that the school is not liable for the negligence of its students.³ Similarly, if a student has met the statutory training period, and the school does not derive pecuniary profits, the school is not liable merely because, through no fault of its own, the student was negligent or lacked skill.⁴

Observation:

An agreement releasing a cosmetology school, its management, owners, agents, or students from liability for any damage or injury resulting from the cosmetological services, and acknowledging that the school is a student training facility, along with a price reduction, does not absolve the school from liability for the negligence of its instructors in failing to properly supervise student operators.⁵

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Footnotes

- 1 [Wall v. Gill, 311 Ky. 796, 225 S.W.2d 670, 14 A.L.R.2d 857 \(1949\); Coons v. Farrell, 437 S.W.2d 674 \(Mo. Ct. App. 1969\); Kligman v. Wilfred Co. of Newark, 91 N.J. Super. 591, 222 A.2d 31 \(App. Div. 1966\).](#)
- 2 [Smith v. Kennedy, 43 Ala. App. 554, 195 So. 2d 820 \(1966\).](#)
- 3 [Wall v. Gill, 311 Ky. 796, 225 S.W.2d 670, 14 A.L.R.2d 857 \(1949\)](#) (state law precluded school from performing services for public for profit).
- 4 [Kligman v. Wilfred Co. of Newark, 91 N.J. Super. 591, 222 A.2d 31 \(App. Div. 1966\)](#) (ordinary concepts of agency and respondeat superior do not apply to such a situation).
- 5 [§ 25.](#)

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Barbers and Cosmetologists
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II. Liability for Injury to Patron

§ 20. Injuries from condition of premises and equipment; duties to invitees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Labor and Employment](#) 3025 to 3077

West's Key Number Digest, [Negligence](#) 321, 322, 483, 550 to 570, 1075 to 1078, 1728

Forms

Forms relating to premises and equipment, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists
[\[Westlaw®\(r\) Search Query\]](#)

The proprietor of a barbershop, a beauty parlor, or a hairdressing business owes to its patrons the duty to see that the premises and equipment intended for the patrons' use are reasonably safe, and to warn of any dangerous condition known, or which reasonably ought to have been known to the proprietor but not to the patron.¹ A beauty school may also be held liable for failing to properly maintain its equipment.² However, a proprietor is not an insurer of the safety of patrons in using the equipment,³ and liability will not attach if it is proved that the equipment used is in general use by others in the beauty business, particularly where it appears that no other accidents had previously occurred.⁴ Thus, a beauty salon was not liable for injuries sustained when a patron fell over a footrest attached to a chair, where there was no evidence that the salon or its employees turned the chair so that the footrest would face the aisle, and no evidence of any prior actual or constructive notice of a defective condition.⁵ On the other hand, where the operator of a beauty salon knew that a particular chair was broken, but used it anyway, the operator breached a duty to the customer injured from the condition of the chair.⁶

Stores and other commercial enterprises must be especially aware when there is a likelihood of wet floors so that an injured patron need not necessarily demonstrate that a dangerous condition had existed for a sufficient length of time to attribute constructive knowledge to the premises owner.⁷ Such a duty has been imposed on a beauty parlor in the vicinity of an area

where hair is shampooed.⁸ However, there was no liability where a customer who slipped and fell while having a haircut and set at a beauty school failed to establish the existence of any defect in the floor proximately causing the fall; even though the students were known to have had water fights in the past, no evidence suggested that there had been a water fight on the day of the fall, which did not occur near a work area where water was dispensed.⁹

An owner of a hair salon owes no duty to an invitee injured during a robbery and thus cannot be held liable for failing to protect the invitee, where the robbery is not reasonably foreseeable.¹⁰

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Footnotes

- 1 [Smith v. Bernfeld](#), 226 Md. 400, 174 A.2d 53 (1961).
- 2 [Krutza v. Milwaukee Billiard & Bowling Club Co.](#), 195 Wis. 5, 216 N.W. 491 (1927).
- 3 [Smith v. Bernfeld](#), 226 Md. 400, 174 A.2d 53 (1961).
- 4 [Sundberg v. Boal](#), 320 Ill. App. 138, 49 N.E.2d 824 (1st Dist. 1943); [Smith v. Marks Isaacs Co.](#), 147 So. 118 (La. Ct. App., Orleans 1933) (recovery denied when chair tilted forward as patron leaned over to place pocketbook on counter).
- 5 [Melton v. E.P.S. Hair Design, Inc.](#), 202 A.D.2d 649, 610 N.Y.S.2d 53 (2d Dep't 1994).
- 6 [DeRouen v. Audirsch](#), 639 So. 2d 476 (La. Ct. App. 2d Cir. 1994).
- 7 [Am. Jur. 2d, Premises Liability](#) § 503.
- 8 [Allen v. Kamp's Beauty Salon, Inc.](#), 177 So. 2d 678 (Fla. 3d DCA 1965); [Sundberg v. Boal](#), 320 Ill. App. 138, 49 N.E.2d 824 (1st Dist. 1943) (injuries sustained in slipping on a small pool of soapy water on the floor of the shop).
As to premises liability from accumulation of liquid on the floor, generally, see [Am. Jur. 2d, Premises Liability](#) § 503.
- 9 [Wright Corp. v. Quack](#), 526 N.E.2d 216 (Ind. Ct. App. 1988).
- 10 [Garner v. McGinty](#), 771 S.W.2d 242 (Tex. App. Austin 1989) (although a salon had been burglarized at night once before and the owner had counseled the employees about how to respond to a robbery, the owner had no reason to anticipate the daytime armed robbery during which the invitee was injured).

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Barbers and Cosmetologists
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II. Liability for Injury to Patron

§ 21. Injuries in administering permanent waves

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Insurance](#)  2391(1)

West's Key Number Digest, [Labor and Employment](#)  3025 to 3077

West's Key Number Digest, [Negligence](#)  321, 322, 1075 to 1078, 1728

Trial Strategy

[Negligent Treatment of Beauty Salon Patron](#), 39 Am. Jur. Proof of Facts 2d 417

Forms

Forms relating to injuries from permanent waves, including burns, defects in hair dryers, and cold wave, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

Liability for injuries may be predicated upon the beautician's failure to exercise ordinary care or to perform a duty owing to the patron in connection with the administration of a permanent wave,¹ even though the work complained of was being done gratuitously to rectify previous unsatisfactory service.² Liability may be imposed, for example, where it is found that the patron's injury resulted from—

— the operator's negligence in permitting excessive heat to be applied to the patron's hair;³

- using a permanent wave solution from a manufacturer's package without first determining whether the product could cause injury;⁴
 - improperly adjusting the patron's hair to the permanent-wave machine;⁵
 - permitting a lighted match to come in contact with cotton placed on the patron's head to protect her scalp;⁶ or
 - failing to remain in attendance upon the patron while the patron's hair was subjected to the heat necessary to the process.⁷
- The mere use of protective devices to prevent burning of the scalp is not the full measure of duty owing to the patron if it is ineffective to accomplish the intended purpose, and an operator aware of the ill effects being produced by the treatment has a duty to make such adjustments as are necessary for preventive purposes, or to discontinue the treatment.⁸

Practice Tip:

Where a plaintiff, who had previously undergone many permanent waves without incident, suffered a loss of hair on the second day after receiving a permanent wave administered by the defendants, and where an expert dermatologist attributed the loss of hair to the permanent wave, an inference of negligence on the part of the defendants arose. The burden was shifted to them to exculpate themselves from a finding of negligence.⁹

Observation:

A beauty school patron has a right to rely on the school's compliance with the state law requirements that any shop where cosmetology is practiced, or school where such is taught, be at all times under the direct supervision of a licensed cosmetologist.¹⁰

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Footnotes

- 1 [Blankenship v. Van Hooser](#), 221 Ala. 542, 130 So. 63 (1930); [Pappas v. Desmarais](#), 310 Mass. 826, 38 N.E.2d 219 (1941); [Lesick v. Proctor](#), 300 Pa. 347, 150 A. 618 (1930).
- 2 [Grenawalt v. Nyhuis](#), 335 Mich. 76, 55 N.W.2d 736 (1952).
- 3 [Dragan v. Artiste Permanent Wave Co.](#), 308 Mass. 32, 30 N.E.2d 856 (1941); [Pratt v. E.W. Edwards & Son](#), 227 A.D. 210, 237 N.Y.S. 372 (4th Dep't 1929).
- 4 [Newmark v. Gimbel's Inc.](#), 54 N.J. 585, 258 A.2d 697, 6 U.C.C. Rep. Serv. 1205 (1969).
- 5 [Ergle v. Davidson](#), 70 Ga. App. 704, 29 S.E.2d 445 (1944).
- 6 [Allen v. Posternock](#), 107 Pa. Super. 332, 163 A. 336 (1932) (where employee in charge of treatment, in presence of defendant, lit cigarettes for himself and plaintiff).

7 Boudreau v. Shatkin, 68 R.I. 504, 30 A.2d 101 (1943); La Foe v. Kolnitz, 171 Wash. 466, 18 P.2d 38 (1933).
8 Davis v. Graves, 250 Ky. 654, 63 S.W.2d 803 (1933).
9 Mouton v. Godchaux's Inc., 360 So. 2d 600 (La. Ct. App. 4th Cir. 1978), writ denied, 363 So. 2d 533 (La.
10 1978).
§ 19.

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Barbers and Cosmetologists

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II. Liability for Injury to Patron

§ 22. Infections; injuries from use of dyes, lotions, and other causes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Insurance](#) 2391(1)

West's Key Number Digest, [Labor and Employment](#) 3025 to 3077

West's Key Number Digest, [Negligence](#) 321, 322, 1075 to 1078, 1728

Trial Strategy

[Cosmetics Injuries](#), 42 Am. Jur. Proof of Facts 2d 97

[Negligent Treatment of Beauty Salon Patron](#), 39 Am. Jur. Proof of Facts 2d 417

Forms

Forms relating to unsterilized instruments, eye injuries, scalp injuries, and reactions to bleaches and dyes, generally, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [[Westlaw®\(r\) Search Query](#)]

Recovery may be had against a barber or beauty specialist for an infection caused by the use of unsterilized or improperly sterilized instruments and appliances,¹ or resulting from failure to treat a scratch or cut caused by an operator's negligence in the use of electric clippers.² However, some negligence on the part of the defendant must be established, and there can be no recovery where it is clearly established that the defendant's operator is trained, skilled, and experienced, the instruments used are properly sterilized, and that the treatment given the plaintiff is done in the customary manner, despite resulting infection.³

Under some circumstances it may be the duty of the hairdresser to warn the patron against the use of hair dyes for a period of time after procuring the permanent wave,⁴ and liability may be predicated upon an employee's use of the wrong solution on a patron's hair, knowing that it had been dyed.⁵ A beauty shop operator may be held liable for negligently applying dye,⁶ and recovery may also be had for injuries resulting from the use of a hair dye or eyelash dye where the proprietor knew, or by taking simple tests should have known, that the particular dye would be injurious to the patron.⁷ The failure to follow instructions of the manufacturer in the application of hair dye, wave solution, and the like, may also be negligent.⁸

Recovery has been had for injuries resulting from:

- (1) the patron being struck in the eye by an electric scalp vibrator,⁹
- (2) an overexposure of x-rays in treatments to remove surplus hair from the face and neck,¹⁰ and
- (3) the application of excessively hot water to the patron's scalp.¹¹

Observation:

It is an abuse of discretion to refuse to allow cross-examination as to whether a patron tried to change her hair color after leaving the beauty shop, where proximate cause as to the chemical burns on the patron's scalp is a disputed issue.¹²

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Footnotes

- 1 Reed v. Rosenthal, 129 Or. 203, 276 P. 684, 63 A.L.R. 1071 (1929).
- 2 Marsteller v. S. Kann Sons & Co., 32 F.2d 419 (App. D.C. 1929).
- 3 Paillet v. Yvette Co., 13 La. App. 357, 127 So. 420 (Orleans 1930).
- 4 Smith v. York, 152 So. 152 (La. Ct. App., Orleans 1934).
- 5 Zimmerman v. Auerbach, 81 Utah 554, 17 P.2d 251 (1932).
- 6 Cottingham v. Wells, 108 Ga. App. 40, 132 S.E.2d 215 (1963).
- 7 Barnett v. Roberts, 243 Mass. 233, 137 N.E. 353 (1922); Arnold v. May Department Stores Co., 337 Mo. 727, 85 S.W.2d 748 (1935).
- 8 Weiss v. Axler, 137 Colo. 544, 328 P.2d 88 (1958) (overruled on other grounds by, Chapman v. Harner, 2014 CO 78, 339 P.3d 519 (Colo. 2014)); Sicard v. Kremer, 133 Ohio St. 291, 10 Ohio Op. 367, 13 N.E.2d 250 (1938).
- 9 Cornbrooks v. Terminal Barber Shops, 282 N.Y. 217, 26 N.E.2d 25 (1940).
- 10 Greenberg v. Post, 155 Fla. 135, 19 So. 2d 714 (1944).
- 11 Resor v. Capelle, 140 So. 699 (La. Ct. App., Orleans 1932).
- 12 Foster v. Bailey, 691 S.W.2d 801 (Tex. App. Houston 1st Dist. 1985).

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11 Am. Jur. 2d Barbers and Cosmetologists § 23

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Barbers and Cosmetologists
Romualdo P. Eclavea, J.D.

II. Liability for Injury to Patron

§ 23. Application of res ipsa loquitur doctrine

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Negligence](#)  1625, 1728

Trial Strategy

[Negligent Treatment of Beauty Salon Patron, 39 Am. Jur. Proof of Facts 2d 417](#)

Forms

As to res ipsa loquitur, see Am. Jur. Pleading and Practice Forms, Barbers and Cosmetologists [\[Westlaw®\(r\): Search Query\]](#)

The res ipsa loquitur doctrine applies where:

- (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence;
- (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and
- (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.¹

The doctrine of res ipsa loquitur has been held applicable to hair treatment situations and beauty or barber shops on a case-by-case basis.² The doctrine is applicable, for example, where the customer was injured by the collapse of a chair in which she was invited to sit for a hair treatment,³ and where a patron's injury occurred after a particular hair bleaching.⁴ It also applies where a customer, while sitting in a booth in the beauty parlor procuring a permanent wave, is injured when struck by a chandelier that breaks loose from the ceiling and falls on her.⁵

The doctrine applies where chemicals are used in hair treatments and permanent waving.⁶ For example, evidence to the effect that the defendant selected and controlled the compounds and instruments used in treating the plaintiff's hair, and that the plaintiff's scalp was blistered and her hair fell out after the treatment, entitles the plaintiff to go to the jury on a res ipsa loquitur submission.⁷ However, as is the case with the doctrine generally, when there is specific evidence of negligence as to a hair treatment, there is no occasion or necessity to explain res ipsa loquitur to the jury.⁸

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Footnotes

- 1 [Am. Jur. 2d, Negligence § 1194.](#)
- 2 [Sheppard v. Travelers Ins. Co., 333 So. 2d 342, 93 A.L.R.3d 889 \(La. Ct. App. 3d Cir. 1976\).](#)
- 3 [Micek v. Weaver-Jackson Co., 12 Cal. App. 2d 19, 54 P.2d 768 \(2d Dist. 1936\); Rose v. Bagon, 37 A.D.2d 949, 326 N.Y.S.2d 222 \(1st Dep't 1971\).](#)
- 4 [Romero v. And'ra, 216 Cal. App. 2d 295, 30 Cal. Rptr. 645 \(1st Dist. 1963\).](#)
- 5 [Galbraith v. Smith, 120 N.J.L. 515, 1 A.2d 34 \(N.J. Sup. Ct. 1938\).](#)
- 6 [Horton v. Seligman & Latz, Inc., 260 So. 2d 731 \(La. Ct. App. 4th Cir. 1972\), writ denied, 262 La. 191, 262 So. 2d 788 \(1972\).](#)
- 7 [Epps v. Ragsdale, 429 S.W.2d 798 \(Mo. Ct. App. 1968\).](#)
- 8 [Queen v. Gagliola, 162 Conn. 164, 292 A.2d 890 \(1972\).](#)

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11 Am. Jur. 2d Barbers and Cosmetologists § 24

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Barbers and Cosmetologists
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II. Liability for Injury to Patron

§ 24. Contributory or comparative negligence; assumption of risk

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Negligence](#)  1717, 1745

Trial Strategy

[Negligent Treatment of Beauty Salon Patron, 39 Am. Jur. Proof of Facts 2d 417](#)

Recovery by a patron of a barbershop or beauty parlor for injuries caused by alleged negligence of the proprietor or employees may be reduced or barred by reason of the patron's own negligence proximately contributing to the injury.¹ However, in order to do so, there must be evidence that the patron was aware of the dangerous character of the treatment, preparation, or the appliance used.² Thus, a cosmetology school customer who suffered hair loss as a result of the alleged negligence of two of the school's instructors in coloring and styling her hair was not contributorily negligent in failing to have a patch test to determine whether she might have an adverse reaction to the chemicals in the hair dye, since, in the light most favorable to the customer, the evidence showed that she did not know anything about a patch test until after the services had been performed.³ Whether a patron of a beauty salon was contributorily negligent in connection with a fall that occurred when she became confused about which of two doors led to a tanning room, and, instead of asking for assistance, went through the incorrect doorway into a dark area and fell down a stairway, was an issue for the jury.⁴ Moreover, even though there may be inherent risks and dangers in the nature of machinery and appliances or solutions used in permanent-waving processes of which the patron may be fully aware, he or she does not assume the risk of injury from negligent operation of, or of defects in, such appliances.⁵

It is an abuse of discretion to refuse to allow cross-examination as to whether a patron tried to change her hair color after leaving the beauty shop, where proximate cause as to the chemical burns on the patron's scalp is a disputed issue.⁶

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Footnotes

- 1 Arata v. Tonegato, 152 Cal. App. 2d 837, 314 P.2d 130 (1st Dist. 1957); Manning v. Leavitt Co., 90 N.H. 167, 5 A.2d 667, 122 A.L.R. 249 (1939).
- 2 Barnett v. Roberts, 243 Mass. 233, 137 N.E. 353 (1922); Heller v. Encore of Hicksville, Inc., 53 N.Y.2d 716, 439 N.Y.S.2d 332, 421 N.E.2d 824 (1981) (patron who smoked during hair treatments not, as a matter of law, contributorily negligent); Reed v. Rosenthal, 129 Or. 203, 276 P. 684, 63 A.L.R. 1071 (1929).
- 3 Alston v. Monk, 92 N.C. App. 59, 373 S.E.2d 463 (1988).
- 4 Howat v. Donelson, 305 Ill. App. 3d 183, 238 Ill. Dec. 337, 711 N.E.2d 440 (5th Dist. 1999).
- 5 Gavin v. Kluge, 275 Mass. 372, 176 N.E. 193 (1931); Christiansen v. Fantle Bros., 56 S.D. 350, 228 N.W. 407 (1929); La Foe v. Kolnitz, 171 Wash. 466, 18 P.2d 38 (1933).
- 6 § 22.

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11 Am. Jur. 2d Barbers and Cosmetologists § 25

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Barbers and Cosmetologists

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II. Liability for Injury to Patron

§ 25. Releases or exculpatory agreements by patrons

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  114

West's Key Number Digest, Release  1 to 24

Forms

Forms relating to releases from patrons in favor of barber or cosmetologist for claim, generally, see Am. Jur. Legal Forms 2d, Barbers and Cosmetologists [\[Westlaw®\(r\) Search Query\]](#)

Absent some statute to the contrary, the generally accepted rule is that contracts against liability for negligence are valid except in those cases where the public interest is involved.¹ The jurisdictions are not all in agreement on preservice exculpatory contracts involving barber or cosmetological services. Some jurisdictions find that a patron may make a valid contract exempting a beauty school from liability for injuries resulting from its negligence or that of its employees.² In these jurisdictions, a customer's release of a beauty school from liability bars an action against the school, notwithstanding the customer's argument that the release violates public policy. While the state closely regulates cosmetologists, beauty schools are specifically exempted from those regulations, the customer chose to go to the school and place herself in the hands of unlicensed students in exchange for a reduced price and the signing of a release, and there were no allegations of intentional or wanton misconduct.³

However, some jurisdictions find such agreements invalid as a matter of law,⁴ thus, a release will not absolve a cosmetology school from liability for acts or omissions of its professional staff.⁵ Other releases have been found unenforceable due to a lack of consideration⁶ or because the school claiming the benefit of the agreement failed to meet state-imposed registration requirements for student operators.⁷ A release that did not use the word “negligence” and did not explicitly release a beauty

college from liability for all of its own conduct was unenforceable and could not exempt the college from liability in a customer's negligence action.⁸

Observation:

Releases executed in conjunction with earlier services may not bar an action against the school for later, different services.⁹

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Footnotes

- 1 [Am. Jur. 2d, Negligence § 45.](#)
- 2 [Henry v. Mansfield Beauty Academy, Inc.](#), 353 Mass. 507, 233 N.E.2d 22 (1968) (rejecting lower court holding that such agreements were void as against public policy); [Dixon v. Manier](#), 545 S.W.2d 948 (Tenn. Ct. App. 1976).
- 3 [Martin v. Wilfred Beauty Academy](#), 155 Misc. 2d 767, 590 N.Y.S.2d 157 (N.Y. City Civ. Ct. 1992).
- 4 [Smith v. Kennedy](#), 43 Ala. App. 554, 195 So. 2d 820 (1966); [Kligman v. Wilfred Co. of Newark](#), 91 N.J. Super. 591, 222 A.2d 31 (App. Div. 1966) (noting that an agreement after service was rendered may be valid); [Alston v. Monk](#), 92 N.C. App. 59, 373 S.E.2d 463 (1988) (noting that the practice of cosmetology and the education of students in this field could affect the health of the general public, and that the state-imposed licensing requirements and other regulation on the practice of cosmetology).
- 5 [Baker v. Stewarts' Inc.](#), 433 N.W.2d 706, 81 A.L.R.4th 437 (Iowa 1988) (application of chemical hair straightener, resulting in bald patches).
- 6 [Dixon v. Manier](#), 545 S.W.2d 948 (Tenn. Ct. App. 1976).
- 7 [Henry v. Mansfield Beauty Academy, Inc.](#), 353 Mass. 507, 233 N.E.2d 22 (1968).
- 8 [Williams v. PJ's College of Cosmetology, Inc.](#), 2006 WL 3371883 (Ky. Ct. App. 2006).
- 9 [Flatt v. Hill](#), 379 S.W.2d 926 (Tex. Civ. App. Dallas 1964), writ refused n.r.e., (July 29, 1964).

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